



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/13024/2018

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice Centre
On 13 June 2019**

Decision & Reasons Promulgated

On 27th June 2019

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**M H M H
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Bayoumi, instructed by Migrant Legal Project (Cardiff)

For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order prohibiting the disclosure or publication of any matter likely to lead to members of the public identifying the appellant. A failure to comply with this direction could lead to Contempt of Court proceedings.

Background

2. The appellant is a citizen of Iraq who was born on 1 February 1995. He entered the United Kingdom on 8 May 2018 and claimed asylum.
3. On 1 November 2018, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and on human rights grounds.
4. The appellant's appealed to the First-tier Tribunal. In a decision sent on 15 January 2018, Judge C H O'Rourke dismissed the appellant's appeal on all grounds.
5. On 15 February 2019, the First-tier Tribunal (Judge P J M Hollingworth) granted the appellant permission to appeal to the Upper Tribunal.
6. The respondent did not file a rule 24 response.

The Judge's Decision

7. The appellant's claim was that, when he lived in the IKR, he had been in a relationship with a girl ("A") without her family's consent. Her family had discovered their relationship and he feared that he would be killed by her family who were powerful and had links with the PUK in the IKR.
8. Judge O'Rourke found that the appellant was not credible and rejected his account. The judge's findings are at paras 21 - 26 of his determination.
9. First, at para 21, the judge summarised the expert report of Professor Bluth submitted in support of the appellant's claim as follows:

"21. Professor Bluth's report. For the purposes of this appeal, I summarise the relevant aspects of Professor Bluth's report, as follows:

- i. There are ongoing tensions between the Iraqi central government and the IKR administration, with the Iraqi government retaking control of some areas previously under Kurdish control (but not relevant to the Appellant's area of the IKR).
- ii. Honour killings are widespread and remain a serious problem and while directed mostly at women and girls, have been extended to men and can escalate to homicidal feuds between families.
- iii. There is not a sufficiency of protection, with little regard for law enforcement among the population.
- iv. various persons of political importance are identified in the photographs provided by the Appellant [A6-7, A14-27] (the Appellant stating that the man shown in the photographs at A21 and 24 is [H].) Professor Bluth states that if the Appellant's account is accepted, then [A's] family would have the level of influence claimed, throughout the IKR."

10. Then, at para 22 the judge identified a number of inconsistencies in the appellant's evidence as follows:

"22. Appellant's Account of events in the IKR. I did not accept the Appellant's account of the events that he states occurred in the IKR and therefore the claimed threat from [A's] family, for the

following reasons, principally relating to inconsistencies in his evidence, indicating to me a fabricated account, parts of which he had now forgotten, or confused:

- i. His account of the core incidents, the two 'visits' to his family home, the 'alleyway' incident and the 'mosque' incident was confused and contradictory. As set out above in my summary of the evidence, he met and talked to [H] in the alleyway incident, but two days later did not recognise his voice on the phone, or put 'two and two together' as to his presence at the earlier incident with A's father. Nor does it seem remotely plausible, having already been directly threatened by [A's] family that he would be apparently unaware of why a supposedly unknown person was abusing him over the phone (without presumably mentioning his relationship with [A]), but still, seemingly out of curiosity, go to meet this person, on ground of that person's choosing. Also, his evidence as to who accompanied him to his confrontation was contradictory, he stated that it was his brother, or alternatively, a friend.
- ii. He was asked to confirm in cross-examination that those incidents were the only ones and he did so, but in interview and his asylum statement referred to other incidents, such as [A's] brother, [H], confronting him in the bazaar, the day after [A's] mother had found them together and also another incident, the day after the mosque incident, when [A's] father attacked him, kicking and beating him, which, in cross-examination, he seemed to have forgotten about.
- iii. His contradictory evidence as to how he obtained a visa to travel to Turkey: his asylum statement said that he'd gone to the Turkish embassy, but in interview and cross-examination, he said he went to a travel agent, specifically denying, in answer to a direct question that he had gone, or needed to go, to an embassy or consulate.
- iv. The timeline of these events, based on the Appellant's own evidence, is as follows. Sometime in 2016, the anonymous letter was sent. A couple of months later, he and [A] are discovered by her mother (so either still in 2016, or perhaps early 2017). After that incident, then matters move very quickly, with a further visit to his home by [A's] family, the alleyway incident and two days later, the mosque incident and then, within days his departure from Iraq. On that timeline, therefore, these incidents are unlikely to have occurred any later than early/mid 2017, but yet the Appellant does not leave Iraq, on his own evidence, until April 2018.
- v. I found the idea that he and [A] were receiving at least several Facebook messages from a competing suitor of hers, but that neither of them (and in particular her) had any idea, or even suspicion, of this person's identity highly implausible."

At para 23, the judge dealt with a further issue which he considered detrimental to the appellant's claim as follows:

"23. Risk of 'Honour'-based Violence. It seems unlikely that if [A's] family were as offended as he stated and as well-connected as he claims that more serious violence or worse would not have been meted out to him, in the up to four or so months over which these events took place, but yet, the worst thing happened, on his evidence was a beating and perhaps being '*cut with a sharp thing*'. They knew where he lived and were able, on his evidence, to make personal contact with him on two (or four) other occasions and therefore had ample opportunity to take serious revenge, but did not. This indicates to me that any such threat is either non-existent or at very least highly exaggerated."

11. Then at para 24 the judge dealt with evidence relied upon by the appellant, in particular photographs said to link the appellant with A and in turn A and her family with powerful members of the PKU and also videos. The latter were available to the judge in DVD form and transcripts of the three videos were in the appellant's bundle at A74 - A75; A77 and A78.

"24. [A's] Family Influence. While I note Professor Bluth's expert evidence as to the identity of the 'prominent' persons in the photographs, the identifies of those others shown, as allegedly related to [A], could be of anybody. Crucially, there is no photograph showing the Appellant and [A] together, a strange omission for a relationship that last seven years (in the iPhone era), but instead, somewhat curious photographs showing a male and female hand together, with a rose [45 & 46] and another, showing for no discernible reason, the torsos, but not the faces, of a man and woman [47]. There is, therefore, apart from the Appellant's own oral evidence, which I find generally lacking in credibility, no corroborative evidence of the relationship between him and [A] (apart from Facebook messages and videos, which, again could have come from anybody [A73-78]). Accordingly, there is no link established between [A] and the girl shown in the photograph with an older man [39] and consequently his appearance with the prominent persons in subsequent photographs. Again, there is no link between [A] and the person said to be [H] in the photographs. All such photographs would be easily obtainable from social media or internet search."

12. At para 25, the judge dealt with whether the appellant could return to the IKR and concluded that he could. Then at para 26, in the light of his earlier findings, the judge found that the appellant had not established that he had a well-founded fear of persecution or a real risk of death or serious ill-treatment contrary to Arts 2 and 3 of the ECHR on return to Iraq.

The Submission

13. On behalf of the appellant, Ms Bayoumi relied upon the three grounds of appeal although she indicated that he was not pressing ground 3 as much as grounds 1 and 2.

14. First, Ms Bayoumi submitted that the judge had fallen into error in para 24 of his determination. She submitted that the judge had failed properly to consider the video evidence and the photographs. She had not appeared before the judge but her understanding was that the videos were not shown but that nevertheless there were transcripts in the appellant's bundle and also evidence from Professor Bluth at para 5.1.1 of his expert report (at page A42 of the appellant's bundle) which linked "A" in the video with the same girl in the photographs and her family and prominent PUK members. Ms Bayoumi submitted that the judge was wrong to say that there was "no link" between "A" and the girl in the photographs and then subsequently, the older man she is with (her father) and prominent members of the PUK shown in other photographs. Further, Ms Bayoumi submitted that it was wrong to say that there was "no discernible reason" why photographs said to be of the appellant and A did not show their faces. In the third video there is recorded the following: "I would have loved to take photos of us with our faces visible, but I could not do it because of my family".
15. Secondly, Ms Bayoumi submitted that the judge had failed to consider written evidence of the appellant's brother at A29 of the appellant's bundle.
16. Finally, although with less enthusiasm, Ms Bayoumi submitted that the "timeline" recognised by the judge in relation to the events at para 22(iv) rested upon his assertion that the events had "move[d] very quickly" following the discovery of the appellant's relationship with A by A's mother. This, Ms Bayoumi submitted, was not readily apparent from the evidence and the appellant had never been asked about it.
17. On behalf of the respondent, Ms Rushforth submitted that the judge had not maternally erred in law.
18. First, she submitted that the judge had taken into account the videos at para 24 of his determination. There was no print from them or video played at the hearing. The judge was entitled to take into account as a "strange omission" that there had been no photograph of A and the appellant together given that their relationship had lasted some seven years. She accepted that the judge did not appear to have been taken into account the explanation given by "A" in the third video (transcript at A78) why their faces had not appeared in photographs. But that, Ms Rushforth submitted, was not material to his decision given his overall reasoning.
19. Secondly, Ms Rushforth accepted that the judge had not specifically dealt with the evidence of the appellant's brother but, again, she submitted that error was not material given the judge's other reasons for disbelieving the appellant.
20. Thirdly, Ms Rushforth took me through the evidence and submitted that the chronology, and the characterisation that "matters move[d] very quickly", was consistent with the evidence.

Discussion

21. As regards ground 1, I accept Ms Bayoumi's submissions that the judge failed properly to consider all the evidence in para 24 of his determination. His reasons failed to grapple with the evidence of Professor Bluth, in particular at para 5.1.1 of his report. I do not propose to set that paragraph out as it contained a number of names which, if I were to anonymise them, would make the paragraph difficult to understand. Suffice it to say, and I did not understand Ms Rushforth to suggest otherwise, this evidence does provide A's basis for linking "A" in the videos with a girl in the photographs who is shown with a man (said to be her father) who is shown in other photographs with other family members and prominent PUK members. Further, the photograph said to be taken of the appellant and "A" are, again, referred to in the videos, as is the explanation why they do not show the faces of the individuals. There is, at least, some evidence here linking the appellant to "A" and, in turn, "A" to a family with connections to prominent PUK members. That is evidence capable of supporting the appellant's claim. The judge failed properly to consider whether there was a "link" (when concluding there was "no link") between "A" and the girl in the photographs and then a family connected with the PUK. Likewise, there was a potentially "discernible reason" why the photographs relied upon by the appellant did not show, it was claimed, the faces of the appellant and "A".
22. I do not accept Ms Rushforth's submission that these errors were not material to the judge's adverse credibility finding. Despite the reasons (in particular in para 22), and assuming those reasons are sustainable, the judge's reasons in para 24 by failing to consider Professor Bluth's relevant evidence and the evidence in the transcripts, caused the judge to discount potentially significant evidence which, in my judgment, is an error that tainted his overall credibility finding.
23. Added to which, as the respondent accepted, the judge failed to consider the supporting evidence of the appellant's brother at A29. The judge makes no reference to it. Perhaps, in itself, this error would not be material if all the other judge's reasons were sustainable. As I have already indicated, the judge's treatment of the evidence in para 24 is not sustainable. His failure to consider the brother's evidence adds weight to the conclusion that the errors were material taken overall.
24. As I have already indicated, Ms Bayoumi did not press ground 3 with the same conviction as grounds 1 and 2. In the light of the view I have taken in relation to grounds 1 and 2, I do not express the view in relation to ground 3. Grounds 1 and 2, in themselves, amount to material errors of law such that the judge's adverse credibility finding cannot stand.

Decision

25. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal involved the making of an error of law. That decision cannot stand and I set it aside.

26. Given the nature and extent of fact-finding required, and having regard to para 7.2 of the Senior President's Practice Statement, the proper disposal of this appeal is to remit it to the First-tier Tribunal for a *de novo* rehearing before a judge other than Judge O'Rourke.

Signed

A handwritten signature in black ink, appearing to read "Andrew Grubb", written over a horizontal line.

A Grubb
Judge of the Upper Tribunal

24 June 2019